HON'BLE SRI JUSTICE A. GOPAL REDDY

WRIT PETITION NO.7952 OF 1997

DATE:19.07.2006

Between:

The Bombay Dyeing Shop, rep by its
Proprietor Joharilal & Co., Hyderabad.

..... PETITIONER

AND

The Labour Court, Hyderabad-I,
Rep. by its Presiding Officer, Hyderabad
And another.

.....RESPONDENTS

HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P. No.7952 OF 1997

ORDER:

This Writ Petition has been filed seeking a writ of Certiorari to call for the records from the first respondent pertaining to the order passed by it in M.P.No.305 of 1993, dated 11.11.1996 and to quash the same.

The second respondent invoked the jurisdiction of the Labour Court by filing an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'the Act') in M.P. No.305 of 1993 alleging that he joined the service of the petitioner-shop as Driver in January 1983 and worked upto 24.7.1991. Since he requested for enhancement of salary, he was removed illegally from service on 24.7.1991 without issuing one month's prior notice and therefore, he is entitled to recover a sum of Rs.9,750/- under different heads from the petitioner-shop. The petitioner-shop filed a counter disputing the jurisdiction of the first respondent alleging that there was no relationship of employer and employee between the petitioner-shop and the second respondent. The second respondent never worked in the petitioner-shop and therefore, the question of retrenchment does not arise and prayed for dismissal of the M.P. In order to prove the claim, the second respondent examined himself as W.W.1 and marked Exs.W.1 to W.4. On behalf of the petitioner, M.Ws.1 and 2 were examined and Exs.M.1 and M.2 were marked.

The Labour Court, at paras 9 to 11 undertook elaborate discussion with regard to the letter of appointment-Ex.W.1 and having considered the same, held that the second respondent was appointed as a driver in the petitioner-shop and was paid the salary of Rs.650/- per month. Further, the legal notice got issued by the second respondent under Ex.W.2, dated 16.8.1991, though was acknowledged by the petitioner-shop under Ex.W.3, no reply was given. Therefore, the Labour Court held that the second respondent was able to establish his claim and accordingly passed the impugned award in his favour.

In this writ petition, though the petitioner filed the copies of

award, petition, counter and evidence of M.Ws.1 and 2, but did not choose to file the letter of appointment-Ex.W.1, on which basis the Labour Court came to the conclusion that the second respondent was employed by the petitioner-shop. The only contention of the learned counsel for the petitioner-shop is that in the absence of any pre-determination of the amounts due to the second respondent, the application under Section 33-C(2) of the Act cannot be maintainable and he placed reliance upon a decision of this Court in **K. Ramaseshu v. Hon'ble Labour Court, Guntur**[1].

Per contra, learned counsel for the second respondent sought to sustain the award passed by the Labour Court and with regard to the maintainability of application under Section 33-C(2) of the Act, placed reliance upon a decision of Apex Court in **State Bank of India v. Ram Chandra Dubey**[2].

In view of the above submissions, it is appropriate to refer Section 33-C(2) of the Industrial Disputes Act, which reads as under:

> "33C. Recovery of money due from an employer-
> (1).....
> .....
> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months :
> .....
> (3) to (5) ....."

In **Ram Chandra Dubey**'s case (2 supra) the Apex Court at para 8 held as under:

> "8.....Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or

> benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. ....."

Coming to the case on hand, the evidence adduced by the second respondent clearly established that he was appointed as a driver by the petitioner-shop and his services were terminated orally on 24.7.1991 without issuing one month's prior notice and paying retrenchment compensation under Section 25-F of the Act. As held by the Apex Court in **Ram Chandra Dubey**'s case (2 supra) the second respondent is entitled to receive the money or benefit which is capable of being computed in terms of money and in case of denial of such benefit, he can approach the Labour Court with an application under Section 33-C(2) of the Act. Hence, the benefit which is sought to be enforced by the second respondent under Section 33-C(2) of the Act is a pre-existing right, but not future compensation such as reinstatement and full or partial wages for the period from the date of termination till the reinstatement, which the Labour Court do not possess. In view of the same, I see no infirmity or illegality in the impugned award warranting interference by this Court.

Accordingly, the Writ Petition is dismissed. No order as to costs.

A. GOPAL REDDY, J

19th JULY, 2006.
Tsr

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[1] 2006 (4) ALD 53

[2] (2001) 1 SCC 73